IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.487 OF 2003

Smt.Sindhu Dhanaji Jagdale & others. ... Petitioners.

vs.

Mrs.Durgaben S. Mallesha & another. ... Respondents.

Mr.S.S.Kulkarni i/b. Mukesh Subramaniam, for Petitioners.

Mr.D.H.Mehta i/b. G.S.Bhatt, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 11th April,2005

P.C.:-

1. In my order passed today in Arbitration Petition no.486 of 2003, I have found that the Award made by the same Arbitrator shocks the judicial conscious. This Award is also between the same parties, though the property is different. But the position regarding ownership of the property and finding recorded without recording any oral and documentary evidence about genuineness of the signature, is the same. The only difference between Arbitration Petition no.486 of 2003 and the present petition is that in the present petition on behalf of the

petitioners reply was not filed. The petitioners admittedly were appearing in person before the Arbitrator. If before the same Arbitrator in relation to the another property, the petitioner had filed the reply in writing, it was really the duty of the learned Arbitrator, specially in view of the fact that the petitioners were appearing in person, to tell them to file a reply in writing. A statement has been made that the petitioners had informed the Arbitrator that their reply filed in another case should be treated as a reply in this case also. This statement is denied by the respondents. But I am inclined to believe the version of the petitioners. Taking overall view of the matter therefore, as the Award is not sustainable, in my opinion, it would be in the interest of justice to set aside the Award. The petition accordingly succeeds and the Award is set aside.

The Respondent no.1 is directed to pay costs of this petition as incurred by the Petitioners.